

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of Application of	)	
	)	
COUNTY OF CLAY, FLORIDA	)	File No. 0001374248
	)	
Modification of License for Private Land Mobile	)	
Radio Station WPDC613	)	

**SECOND ORDER ON RECONSIDERATION**

**Adopted: July 22, 2005**

**Released: July 26, 2005**

By the Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau:

1. *Introduction.* On April 16, 2004, the City of Ocala, Florida (Ocala) filed a petition for reconsideration (Petition)<sup>1</sup> of our action<sup>2</sup> denying Ocala's Petition to Deny,<sup>3</sup> and our grant of the above-captioned application modifying the license for Station WPDC613, Orange Park, Florida, licensed to the County of Clay, Florida (Clay).<sup>4</sup> In the Petition, Ocala expresses ongoing concerns of potential harmful interference to Ocala's operations at Station WPF993 from two Clay base stations, and Ocala provides additional engineering data in support.<sup>5</sup> On June 1, 2004, Clay filed an opposition to Ocala's Petition,<sup>6</sup> and on June 10, 2005, Ocala filed a reply.<sup>7</sup> For the reasons set forth below, we deny Ocala's Petition<sup>8</sup> and dismiss Clay's Opposition and Ocala's Reply.

2. *Background.* On July 7, 2003, Clay filed an application proposing to modify its license for Private Land Mobile Station WPDC613 by adding four new channels pairs to its currently authorized locations.<sup>9</sup> Clay amended its application, on August 21, 2003, to specify a directional antenna at one of

<sup>1</sup> See Petition for Reconsideration of the City of Ocala, Florida, filed April 16, 2004.

<sup>2</sup> Letter from Tracy Simmons, Acting Associate Chief, Licensing Operations, Public Safety and Critical Infrastructure Division, to Mindy Stewart, 800 MHz Systems Manager, City of Ocala (Mar. 17, 2004) (*Response Letter*).

<sup>3</sup> Petition to Deny, filed September 9, 2003 (Petition to Deny).

<sup>4</sup> The application was granted March 24, 2004.

<sup>5</sup> See notes 15-22 and accompanying text, *infra*.

<sup>6</sup> See Clay County's Response To The Petition For Reconsideration Filed By The City Of Ocala, Florida, filed by Clay on June 1, 2004 (Opposition).

<sup>7</sup> See Reply to 'Response' to Petition for Reconsideration, filed by Ocala on June 10, 2004 (Reply).

<sup>8</sup> The instant *Second Order on Reconsideration* supercedes the prior *Order on Reconsideration* in this proceeding. The *Order on Reconsideration* dismissed Ocala's Petition on the ground that Ocala filed its Petition at the wrong location. See Application of Clay County, Florida, Modification to Private Land Mobile Radio Service License WPDC613, *Order on Reconsideration*, 20 FCC Rcd 5381 (WTB PSCID rel. Mar. 14, 2005). We subsequently determined that Ocala properly filed its Petition with the Secretary's Office in Washington D.C., as required by the Commission's Rules. See 47 C.F.R. 1.106(i). Consequently, this *Second Order on Reconsideration* addresses the Ocala Petition on the merits.

<sup>9</sup> FCC File No. 0001374248. Clay's application proposed adding the frequency pairs 812/857.2125 MHz, 812/857.9875 MHz, 813/858.46250 MHz, and 813/858.9875 MHz.

the fixed locations. On September 3, 2003, Clay amended its application to request a waiver of Section 90.621(b) of the Commission's Rules.<sup>10</sup> Clay requested a waiver of Section 90.621(b) in order to operate frequency 857.2125 MHz at a location 67.3 kilometers from co-channel Station WPF943, Ocala, Florida, licensed to Ocala.<sup>11</sup> Section 90.621(b)(4) specifies that co-channel stations may be separated less than 113 kilometers (70 miles) but no less than 88 kilometers (55 miles) if the proposed station satisfies certain transmitter power and antenna height limits.<sup>12</sup> These limits are designed to prevent a proposed station from interfering with an existing co-channel station.<sup>13</sup> In its Waiver Request, Clay submitted contour maps demonstrating that the 22 dBu F(50,10) interference contour of the proposed operation produced no overlap with the existing 40 dBu F(50,50) service contour of Ocala's station.<sup>14</sup>

3. On September 9, 2003, Ocala filed the Petition to Deny, requesting that Clay's pending application be denied and citing concerns of harmful interference to Ocala's licensed system.<sup>15</sup> By letter, on March 17, 2004, the Public Safety and Critical Infrastructure Division (Division) denied Ocala's Petition to Deny, stating that Ocala's engineering exhibits do "not take into account the use of a directional antenna as submitted in Clay County's application."<sup>16</sup> The Division granted Clay's application on March 24, 2004, conditioning Clay's authorization on the use of a directional antenna at the Keystone Heights, Florida, site location.

4. On April 16, 2004, Ocala filed the Petition, requesting reconsideration of the grant of Clay's application and our action denying Ocala's Petition to Deny. As support, the Petition contains additional engineering data.<sup>17</sup> Specifically, Ocala believes that the following Clay base stations pose the potential for harmful interference to Ocala:

<u>Location of Clay County Base Station</u>	<u>Site Number</u>	<u>Distance to Ocala Station WPF943</u>	<u>Frequency</u>	<u>Effective Radiated Power (ERP)</u>
Keystone Heights	2	67.1 kilometers (41.7 miles)	857.2125 MHz	250 watts
Green Cove Springs	8	97.55 kilometers (60.6 miles)	857.2125 MHz	250 watts

5. Specifically, in the Petition, Ocala submits a contour study showing that the 22 dBu F(50,10) interference contour from Clay's Keystone Heights base station overlaps with the 40 dBu F(50,50) contour of Ocala's station.<sup>18</sup> Therefore, Ocala requests that Clay conduct field studies to confirm the absence of interference.<sup>19</sup> Ocala also includes a contour study showing no overlap between

<sup>10</sup> See waiver request attached to FCC File No. 0001374248 (Waiver Request).

<sup>11</sup> *Id.* at 1.

<sup>12</sup> See 47 C.F.R. § 90.621(b)(4).

<sup>13</sup> See *id.*

<sup>14</sup> See Waiver Request at 1 and contour plots attached to FCC File No. 0001374248.

<sup>15</sup> Petition to Deny at 1.

<sup>16</sup> See *Response Letter*.

<sup>17</sup> See Petition at 1-2 and attachment thereto.

<sup>18</sup> Petition at 2 and attached contour plot.

<sup>19</sup> See *id.* at 2.

the 22 dBu F(50,10) interference contour of Clay's Green Cove Springs base station and the Ocala 40 dBu F(50,50) contour.<sup>20</sup> Nonetheless, Ocala expresses concern regarding the directional antenna height above average terrain (DHAAT) from the Green Cove Springs site toward Ocala's station.<sup>21</sup> Thus Ocala requests that Clay reduce the ERP of its Green Cove Springs site to 125 watts.<sup>22</sup>

6. *Discussion.* Our engineering staff has carefully analyzed the interference potential of Clay's operation on frequency 857.2125 MHz at its Keystone Heights and Green Cove Springs locations with respect to Ocala's Station WPF973. We conclude that Clay has minimized the potential for harmful interference from these sites to Ocala's station.

7. Specifically, our staff performed a contour overlap study on the Keystone Heights location and concluded that Clay's use of a directional antenna at this location prevents overlap of Clay's 22 dBu F(50,10) interference contour with Ocala's 40 dBu F(50,50) contour, notwithstanding the fact that the sites are separated by only 67.1 kilometers (41.7 miles), rather than the 88-kilometer (55-mile) minimum in our rules. Ocala's contour plot shown in its Petition does not appear to take into account the use of a directional antenna at this site. Clay has asked for a waiver of the minimum distance separation under Section 90.621(b), based on its use of a directional antenna at the Keystone Heights location.<sup>23</sup> Based on our review of the record, we conclude that the Division properly analyzed the Keystone Heights location when it granted Clay's Waiver Request based on the non-overlap of Clay's 22 dBu F(50,10) interference contour with Ocala's 40 dBu F(50,50) interference contour.

8. Regarding Clay's Green Cove Springs location, we note that this site is 97.6 kilometers (60.6 miles) from Ocala's station, greater than the minimum required separation distance of 88 kilometers (55 miles).<sup>24</sup> Further, our staff has performed a study to determine the DHAAT from the Green Cove Springs site to Ocala's site, as well as the DHAAT from Ocala's site to the Green Cove Springs site. We conclude that, based on these DHAATs, Section 90.621(b)(4) allows Clay to operate with 250 watts ERP at a minimum distance of 95 kilometers.<sup>25</sup> Therefore, Clay requires no waiver to operate at this site with 250 watts ERP.

9. Finally, we dismiss Clay's Opposition and Ocala's Reply because they were filed late. Section 1.106(g) of the Commission's Rules requires an opposition to a petition for reconsideration to be filed within ten days after the filing of the petition for reconsideration.<sup>26</sup> Section 1.106(h) indicates that any reply to an opposition is due seven days after the last day for filing oppositions.<sup>27</sup> Clay's Opposition was due April 26, 2004 (ten days after the April 16, 2004 filing of Ocala's Petition). Ocala's Reply was due on May 3, 2004 (seven days after the April 26, 2004 due date for the Opposition). However, Clay did not file its Opposition, dated May 27, 2004 and filed on June 1, 2004, until over a month after it was due,

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<sup>20</sup> See *id.* and attached contour plot.

<sup>21</sup> See *id.* at 2. Moreover, Ocala indicates that Clay's DHAAT analysis does not provide the ERP information for the Ocala site used in the analysis, and fails to show separation and clearance levels. *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> See Waiver Request.

<sup>24</sup> See 47 C.F.R. § 90.621(b)(4).

<sup>25</sup> Our engineering staff has determined that the DHAAT from the Clay's Green Cove Springs site toward Ocala's site is approximately 91 meters, while the DHAAT from Ocala's site to Clay's Green Cove Springs is approximately 126 meters. Therefore, the short-spacing table in Section 90.621(b)(4) of the Commission's Rules would permit a co-channel spacing of 96 kilometers (59.7 miles). See Short-Spacing Separation Table, 47 C.F.R. § 90.621(b)(4).

<sup>26</sup> 47 C.F.R. § 1.106(g).

<sup>27</sup> 47 C.F.R. § 1.106(h).

and Ocala did not file its Reply until June 10, 2004. Neither party requested a waiver of its respective procedural deadline. Accordingly, we dismiss these two pleadings as late-filed and procedurally defective.

10. *Conclusion and Ordering Clauses.* Based on the foregoing, we conclude that the Division acted properly in granting Clay's modification application and denying Ocala's Petition to Deny.

11. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Petition For Reconsideration filed on April 16, 2004 by the City of Ocala, IS DENIED.

12. IT IS FURTHER ORDERED that pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 405, and Section 1.106(g) and (h) of the Commission's Rules, 47 C.F.R. § 1.106(g), (h), that Clay County's Opposition, filed by the County of Clay on June 1, 2004, and the Reply to 'Response' filed by the City of Ocala, Florida, on June 10, 2004, ARE DISMISSED.

13. These actions are taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone  
Deputy Chief  
Public Safety and Critical Infrastructure Division  
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